

Banawarilal Agarwalla and anr. Vs. Jeevan Kumar Badu and anr.

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Court : Orissa

Decided On : May-15-2002

Reported in : 94(2002)CLT588; 2002(II)OLR165

Judge : P.K. Tripathy, J.

Appeal No. : Misc. Appeal No. 392 of 1993

Appellant : Banawarilal Agarwalla and anr.

Respondent : Jeevan Kumar Badu and anr.

Advocate for Def. : B.P. Ray, A.K. Dalai, ;A. Mohanty and ;B. Mishra for Respondent No. 1 and ;A.K. Mohanty and S.N. Satpathy for Respondent No. 2

Advocate for Pet/Ap. : B.B. Jena, S.R. Patnaik and S.K. Mohapatra

Judgement :

P. K. Tripathy, J.

1. Feeling aggrieved by apportionment of the compensation in MACT Misc. Case No. 169 of 1983 of the Court of Third MACT, Puri, the claimants have filed this appeal challenging the impugned award dated 17.3.1993.

2. The parents of the deceased Pabanlal Agrawal filed the said MACT Misc. Case for compensation on the ground that on 15.8.1981 the mini-truck bearing

registration No. ORX-2317 being rash and negligently driven caused the accident as a result of which the deceased boy standing by the side of the road suffered instantaneous death. Monthly income of the said deceased was stated as Rs. 1500/- per month and a claim was made for compensation of Rs. 2,65,000/-. Opposite Party No. 1/respondent No. 1 is the owner of that mini-truck and opposite party No.2/respondent No. 2 is the insurer of the mini-truck. In their separate written statements the owner and the insurer of the offending vehicle denied to the allegation of rash and negligent driving by the driver of the mini-truck and accordingly denied to their liability to make payment of compensation. It was stated in such written statements that when the mini-truck was moving on the road in slow speed, the deceased driving the scooter made attempt to overtake the mini-truck from the wrong side i.e., the left side of the road and met with the accident by dashing against the rear portion of the Dala of the mini-truck and that is why he suffered the injuries and died at the spot.

3. Learned 3rd MACT, Puri framed the following issues :

'1. Is the claim petition maintainable as framed ?

2. Was the driver of ORX-2317 Mini Truck negligent in causing the accident ?

3. To what compensation the petitioners are entitled ?

4. Relief?'

4. Claimants adduced evidence of four witnesses including the claimant No. 1/appellant No. 1 being examined as P.W. No. 1. Appellants also relied on documents marked Exts. 1 to 8. Out of those Exts. 1 to 4 are respectively certified copies of seizure-list, charge-sheet, MV! Report and Zimanama. Those documents were available in the G.R. Case No. 1784 of 1981 registered against the driver for rash and negligent driving. Exts. 5 to 8 are documents in support of the deceased's engagement in business and earning therefrom. Opposite Party No. 1 i.e., the owner of the truck examined two witnesses as O.P.Ws. 1 and 2. Out of them the driver of the offending truck was O.P.W. No. 2 and the other witness was examined as an eye witness to the occurrence. The opposite party No. 1 also

relied on documents marked Exts. A to E. Out of that Ext. E is the certified copy of statement of P.W. No. 1 which he made to police as a witness in the above noted G.R. Case No. 1784 of 1981.

5. While deciding issue No. 2, learned 3rd MACT referring to the chargesheet and the 161 statement of the claimant No. 1 and the evidence of OPW No. 1 has recorded the finding that both the mini-truck and the deceased who was the scooterist then were negligent as a result of which the accident occurred. Learned Tribunal found it difficult to apportion the extent of negligence and liability by mathematical accuracy and therefore followed the convenient way of saddling the liability half and half on the insurer of the truck as well as on the claimants.

6. Admittedly, the respondents and more particularly the respondent No. 2 has not challenged the impugned award by filing any appeal or cross-objection.

7. Learned counsel for the claimants read the evidence of each of the witnesses examined from both the sides and states that when the evidence led from the side of the claimants suffers from no contradiction or infirmity relating to the manner in which the claimants have narrated about the accident attributing the total negligence to the driver of the mini-truck, learned MACT should not have set at naught such consistent evidence by referring to a chargesheet the maker of which was not examined in the court and besides that to the uncorroborated evidence of the OPWs. Accordingly, he argues to saddle the entire liability on the opposite party members. Learned counsel appearing for respondent No. 2, on the other hand, argues that the evidence emerging from the depositions of OPWs 1 and 2 stands to reason and therefore that cannot be discarded merely because of parrot like statements of the P.Ws. attributing negligence on the driver of the mini-truck. He further argues that the statement of P.W. 1 recorded under Section 162 by the Investigating Officer and the certified copy thereof marked Ext. E clearly shows that the claimant/P.W. 1 has changed the sequence of events i.e., the manner in which and the reasons for which the accident occurred. Accordingly, he argues that the factual finding of the Court below may not be interfered with when there is no illegality or perversity in that.

8. The Claims Tribunal has indeed assessed evidentiary value of Ext. 2, the Chargesheet, Ext. B the FIR and Ext. E the statement of P.W. 1 before police and accepted the same to attribute part of negligence to the deceased boy/while passing the award in the above noted manner. As rightly argued by learned counsel for the appellant without confronting the FIR and statement Exts. B and E to the P.W. 1, such documents cannot acquire any evidentiary value to discredit the evidence of P.W. 1 which he adduced before the Tribunal. Indeed, such documents as exhibits do not ipso facto provides credibility unless those documents are properly proved. A chargesheet contains the consequence of an investigation on the basis of the opinion of the Investigating Officer at the conclusion of the investigation. Therefore, the chargesheet ipso facto does not prove anything unless the person who has prepared the same is examined to prove that document. This aspect was not at all considered by the Tribunal. In their depositions P.Ws. have clearly stated that the mini-truck dashed against the deceased while he was on the side of the road. That evidence has not been shattered during cross-examination by the opposite party members. It is readable from the depositions that no attempt was made by the opposite party members to bring appropriate materials to discredit their evidence. No effort was also made by the opposite party members to bring out the topography of the spot of the occurrence and the possibility of local inhabitants as eye-witnesses rather than the stray passersby. Be that as it may, when evidence of P.Ws. consistently prove that the deceased-boy was standing by the side of the road when met with the accident, that evidence cannot be lightly brushed aside merely on the basis of the certified copy of a chargesheet or the stray evidence of OPW 1. Therefore, the assessment of evidence and the method thereof adopted by the Court below to saddle the negligence on both parties is found to be not correct both legally and factually. On assessment of such evidence on record it can be safely said that the claimants have established that the driver of the truck was negligent for the accident. When the truck is validly insured the insurer of the mini-truck is squarely liable to pay the entire compensation. Under such circumstance, saddling of 50% liability on the claimants is set aside and the entire amount of compensation is directed to be paid by respondent No. 2.

9. At the time of filing of appeal appellants made a claim of Rs. 2,65,000/-. But as per order No. 6 dt. 22.3.1994 prayer of the appellants was allowed to reduce their claim to the extent of Rs. 1,00,000/- (one lakh). In that respect learned counsel for the appellants makes statement that incapability of the appellants to pay the Court fee made them to make such an application for reduction of the amount of claim. Be that as it may, when the claim has been reduced to Rs. 1,00,000/- and that is the total compensation awarded by the Tribunal, this Court finds no scope or reason for enhancing the quantum of compensation.

10. Thus, the appeal is allowed by setting aside the impugned award to the extent that the entire liability shall be on the respondent No. 2-Insurance Company for payment of the compensation amount and to pay the interest in case of the default in the manner indicated ' in the impugned award. Parties are to bear their respective cost of litigation. Hearing fee is assessed at contested scale.